



Paul E. Breene
Direct Phone: +1 212 205 6023
Email: pbreene@reedsmit.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
+1 212 521 5400
Fax +1 212 521 5450
reedsmit.com

May 17, 2023

Via ECF and Email (shl.orders@nysb.uscourts.gov)

The Honorable Sean H. Lane
U.S. Bankruptcy Court for the Southern District of
New York
300 Quarropas Street
White Plains, New York 10601

Re: In re Purdue Pharma L.P., et al., Case No. 19-23649 (SHL)
Purdue Pharma L.P., et al., v. AIG Specialty Insurance Company, et al.,
Adv. Pro. No. 21-07005-shl

Dear Judge Lane:

We are special counsel for the debtors in the above-captioned chapter 11 cases (“Debtors”) with regard to insurance matters, including the above-captioned adversary proceeding (the “Action”). Plaintiffs in this Action are certain Debtors,¹ the Official Committee of Unsecured Creditors (“UCC”) and the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (“AHC”) (collectively herein, “Plaintiffs”). Defendants are certain of the Debtors’ liability insurers.² Pursuant to Your Honor’s Chambers Rules pertaining to conferences, we write on behalf of all parties currently involved in the Action to respectfully request a conference with the Court.

Plaintiffs’ Position:

Over the past several weeks, Debtors, together with co-plaintiffs, approached Defendants and proposed a stay until there is a final, non-appealable, confirmed plan of reorganization. Under the current Amended Scheduling and Pre-Trial Order, expert disclosures are due June 15, 2023, fact discovery must be completed by July 21, 2023, and, immediately thereafter, expert discovery is scheduled to begin. [Dkt. 261.] Plaintiffs believe that a stay of this Action is appropriate at this time in light of the continuing uncertainty with regard to the terms of the final plan, how those final terms may affect insurance coverage

¹ The following Debtors are Plaintiffs in the adversary action: Purdue Pharma L.P., Purdue Pharma Inc.; Purdue Pharma Manufacturing L.P.; Purdue Pharmaceuticals L.P.; Purdue Transdermal Technologies L.P.; Purdue Pharmaceutical Products L.P.; Purdue Pharma of Puerto Rico; Rhodes Pharmaceuticals L.P.; Rhodes Technologies, and Avrio Health L.P.

² On June 29, 2021, this Court granted the motion of a number of insurer defendants to stay the claims against them in favor of arbitration. [Dkt. 164.] “Defendants” here means the insurers that issued policies not subject to that stay: Navigators Specialty Insurance Company (“Navigators”); American Guarantee and Liability Insurance Company (“AGLIC”); Steadfast Insurance Company (“Steadfast”); XL Insurance America, Inc. (“XL America”); Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, and Liberty Insurance Corporation (collectively, “Liberty Mutual”); North American Elite Insurance Company (“NAE”); Aspen American Insurance Company (“Aspen”); Gulf Underwriters Insurance Company (“Gulf”); St. Paul Fire and Marine Insurance Company (“St. Paul”); and National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”).

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issues in the Action, and when the effective date of any such plan will occur. Because of this uncertainty, Plaintiffs do not believe that continuing with expensive fact discovery, discovery motions, or launching expert discovery is in the best interests of the Debtors or the constituencies of the UCC and AHC. Plaintiffs seek a stay effective immediately.

Defendants' Positions:

Certain Defendants: Defendants AGLIC, Steadfast, NAE, Aspen, Navigators and National Union (“Certain Defendants”) disagree that a stay of the Action is necessary. While some adjustment to the schedule is appropriate until there is more certainty regarding the final plan, a complete stay is unwarranted, and would only add to the expense of litigating this matter for all parties, including the Debtors. Plaintiffs filed this Adversary Proceeding two years ago without a final plan in place, presumably in the belief that progress in the litigation was possible. The parties have been litigating the case since then without a plan, and Plaintiffs have not suggested that a final plan is necessary to continue to make progress. On the contrary, the parties can and should address in the coming months a number of significant matters that do not depend on a final plan. These are matters that will have to be addressed no matter what plan ultimately becomes effective. Defendants have sought to collaborate with Plaintiffs in this regard, proposing categories of discovery that can move forward without a plan. Defendants remain willing to work together with Plaintiffs to agree on what can move forward. Postponing indefinitely litigation of matters that can be addressed now would be very inefficient, and evidentiary risks associated with the passage of time are significant because the record in this case stretches back well over two decades. Certain Defendants therefore believe that the parties should continue to advance the litigation where possible, and consult again with one another and the Court on appropriate next steps in September 2023, or when a final plan is in place, if that occurs before September.

Defendants Liberty Mutual, Gulf and St. Paul: These Defendants contend that, for the same reasons Plaintiffs seek a stay until there is a final, non-appealable, confirmed plan of reorganization, the Court should dismiss this Action without prejudice for the Plaintiffs or their successor to file their action at such later time.

The parties request a conference with the Court to present their thinking and for the Court to provide guidance with respect to the matters on which we disagree.

All parties have reviewed and approved this letter and agree that it would be best to address these matters with Your Honor at a conference. The parties are available at the Court’s convenience to address any questions or concerns the Court may have.

Respectfully submitted,

/s/ Paul E. Breene

Paul E. Breene
Reed Smith LLP

PEB:mb

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Attachment

cc: All Counsel on Attached Distribution List

Name	Email
Ann Kramer	AKramer@ReedSmith.com
Paul Breene	PBreene@ReedSmith.com
Anthony Crawford	ACrawford@ReedSmith.com
Lisa Szymanski	LSzymanski@ReedSmith.com
Margaret McDonald	MCMcDonald@reedsmith.com
Adrienne Kitchen	AKitchen@reedsmith.com
Elizabeth Vieyra	evieyra@reedsmith.com
Lianna Simmonds	LSimmonds@ReedSmith.com
Kyle McCloskey	KMcCloskey@ReedSmith.com
Reed Smith Team	PurdueTeam@ReedSmith.com
Richard Leveridge	leveridger@gilbertlegal.com
Richard Shore	shorer@gilbertlegal.com
Jason Rubinstein	rubinsteinj@gilbertlegal.com
Michael Rush	rushm@gilbertlegal.com
Adam Fleischer	afleischer@BatesCarey.com
Patrick Bedell	rbedell@BatesCarey.com
Kim Marrkand	KVMarrkand@mintz.com
Nicholas Cramb	NCCramb@mintz.com
William Russell	wrussell@stblaw.com
Conor Mercadante	Conor.Mercadante@stblaw.com
Bryce Friedman	bfriedman@stblaw.com
Mitch Auslander	mauslander@willkie.com
Joseph Davis	jdavis@wilkie.com
Genevieve DiSpirito	GDiSpirito@willkie.com
Patrick Maxcy	patrick.maxcy@dentons.com
Joseph A. Hinkhouse	jhinkhouse@hww-law.com
Colleen Sorensen	csorensen@batescarey.com
David Schoenfeld	DSCHOENFELD@shb.com
Lynn Murray	LHMURRAY@SHB.com
Justin Alberto	JAlberto@coleschotz.com
Mike Klauder	MKlauder@coleschotz.com
Warren Usatine	WUsatine@coleschotz.com
Anthony De Leo	ADeLeo@coleschotz.com
Ashley Crawford	avcrawford@akingump.com
Ira S. Dizengoff	idizengoff@akingump.com
Corey William Roush	crouch@akingump.com
Elizabeth Scott	edscott@akingump.com
Dennis Windscheffel	dwindscheffel@akingump.com
Purdue UCC Insurance	PurdueUCCIInsurance@akingump.com